

BLAND, C., 5th August, 1831.—This is indeed a case of very small amount in value; but it involves principles which are of the greatest importance as regards the practice and course of proceeding in this Court. The right of this tribunal to resort to some effectual means of collecting legal testimony of every description, it is manifest, must be found among the powers necessarily belonging to it as a Court; for, without such a power, it would be impossible to proceed with due effect in the administration of justice in any controverted case whatever. The only inquiry therefore is, as to the mode of proceeding which should be adopted to attain that great object. *Amey v. Long*, 9 East, 484; *Lupton v. Hescott*, 1 Cond. Cha. Rep. 138; *Maccubbin v. Matthews*, 2 Bland, 250.

In England, the leading process, in Courts of equity, is the *subpœna ad respondendum*, which is not, like the first process in a suit at common law, directed to the sheriff, commanding him to *summon, or to have the defendant before the Court to answer the complaint of the plaintiff; but it is always addressed, personally, to the defendant himself, commanding him to appear and answer. It does not appear, that this first process in equity was ever required in England to be executed by a sheriff, who is the officer of the Court, or by the messenger, as its immediate officer; *Forum Rom.* 35; but it might be executed by any one, so that the Court was satisfied by proof of its having been duly served. *Forum Rom.* 37, 41. If, after a subpœna has been served the defendant fails to appear, then the next process is an attachment; which is a writ directed to the sheriff, commanding him to attach the defendant so as to have him before the Court. And if the defendant still persists in his contumacy, the several subsequent writs, which may be issued to compel an appearance, are all, in like manner, directed to the sheriff. 9 Harr. Pra. Chan. 221. But as a sheriff is a mere local officer, having no authority beyond the bounds of his county, he cannot bring a defendant, who he has so taken into his custody, into the Court while it is sitting in a remote or different county. And therefore upon his return of the fact of the defendant having been attached, the Court, on application, will order him to be brought before it by a special messenger. *Forum Rom.* 70; 1 Harr. Pra. Chan. 234.

In England when a commission issued to take testimony, as the commissioners were specially directed to call the witnesses before them, they might and most usually did so, by a process signed by two or more of them. But it was thought to be more regular and effectual to issue a *subpœna ad testificandum*, from the Court itself, commanding the witnesses to attend upon the commissioners. This subpœna, as well as the *subpœna duces tecum*, which seems to be now little used in England, *Prac. Reg.* 346, like the leading process of the Court, was not addressed to the sheriff,